UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: Luke D. Ratcliff *Docket No.:* 3040 *Art Unit:* 3662

In re:

Applicant: Uwe SKULTETY-BETZ

Serial No.: 10/502,411

Filed: July 23, 2004

RESPONSE TO NOTIFICATION OF NON-COMPLIANT BRIEF APPEAL

October 8, 2007

Commissioner for Patents
P O Box 1450
Alexandria, VA 22313-1450

Sir:

This is a response to a Notification of Non-Compliant Appeal Brief dated September 17, 2007. This is an Appeal from the Final Rejection of claims 1, 3 and 6-12 by the Examiner.

Real Party of Interest

The real party of interest in this application is Robert Bosch GmbH having a business address of Postfach 30 02 20, D-70442 Stuttgart, Germany.

Related Appeals and Interferences

There are no pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

The present application now contains claims 1, 3 and 6-12.

Claims 2, 4 and 5 have been cancelled.

In the Final Office Action of March 23, 2007, the Examiner indicated that claims 1, 3 and 6-12 were rejected. In the Advisory Action of June 15, 2007, the Examiner confirmed the rejection of the claims.

Therefore claims 1, 3 and 6-12 are appealed with the present Brief on Appeal.

Status of Amendments

The Final Office Action was issued on March 23, 2007. After the Final Action the appellants filed a Request for Reconsideration dated June 5, 2007.

While in the Advisory Action the Examiner did not indicate whether it was entered or not, it is believed that the Request for Reconsideration of June 5, 2007 was entered by the Examiner.

Summary of Claimed Subject Matter

The present invention deals with a handheld laser distance measuring device which is identified as a whole with reference numeral 10.

Claim 1 defines a handheld laser distance measuring device, with a position sensor (22) for determining the spacial orientation of the distance measuring device, wherein the position sensor (22) is connected with a signal transducer (12, 28, 30, 32), whereby the signal transducer (12, 28, 30, 32) is capable of being triggered by the position sensor (22) to emit a perceptible signal which depends on the spacial orientation, wherein the signal transducer is an optical signal transducer (12, 30), an acoustic signal transducer (28) or a tactile signal transducer (32) and wherein the optical signal transducer is a laser (12) that emits light in the visible wavelength range and serves to measure distance.

Claim 11 defines a handheld laser distance measuring device comprising a laser (12) being integrated in a housing, a position sensor (22) for determining the special orientation of the distance measuring device, wherein the position sensor (22) is connected with a signal transducer (12, 28, 30, 32), whereby the position sensor (22) and the signal transducer (12, 28, 30, 32) are integrated in said housing, whereby the signal transducer (12, 28, 30, 32) is capable of being triggered by the position sensor (22) to emit a perceptible signal which depends on the spacial orientation and wherein the signal transducer in an

optical signal transducer (12, 30), an acoustic signal transducer (28) or a tactile signal transducer (32).

In claims 1 and 11 the inventive device 10 has a position sensor 22 for determining a spacial orientation of the distance measuring device. The position sensor 22 is described in lines 26-30 on page 6 of the specification and shown in Figures 2, 3, 4 and 5. The position sensor 22 is connected with a signal transducer which is capable of being triggered by the position sensor to emit a perceptible signal which depends on the spacial orientation. The signal transducer is an optical sensor transducer 12, 30, an acoustic signal transducer 28, or a tactile signal transducer 32. The optical signal transducer is a laser 12 that emits light in the visible wavelength range and serves to measure distance.

The signal transducer 12 is disclosed in the specification for example in lines 6-7 on page 6 and shown in Figures 2-5. The signal transducer 28 is described for example in lines 1-5 on page 8 of the specification and shown in Figure 3. The signal transducer 30 is described in lines 21-27 on page 8 of the specification and shown in Figure 4. The signal transducer 32 is described in lines 9-15 on page 9 of the specification and shown in Figure 5.

Grounds of Rejection to be Reviewed on Appeal

Claims 1, 6, 8, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated over the U.S. patent to Dunne. Thus, the first ground of rejection to be reviewed on appeal is whether these claims are rejectable as being anticipated in the sense of 35 U.S.C. 102(b) over the Dunne reference.

Claim 7 was rejected under 35 U.S.C. 103(a) as being unpatentable over the patent to Dunne. Thus, the second ground for rejection to be reviewed on appeal is whether claim 7 can be considered as unpatentable over the patent to Dunne in the sense of 35 U.S.C. 103(a).

Finally, claims 3, 10 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over the U.S. patent to Dunne in view of the patent to Heironimus. Therefore, the third ground for rejection to be reviewed on appeal is whether claims 3, 10 and 12 are rejectable in the sense of 35 U.S.C. 103(a) over the combination of the patents to Dunne and Heironimus.

Argument

Argument related to the first ground of rejection to be reviewed on appeal, namely whether claims 1, 6, 8, 9 and 11 are rejectable over the patent to Dunne under 35 U.S.C. 102(b).

Claim 1, the broadest claim on file, defines a handheld laser distance measuring device, which, in addition, to other features, has the optical signal transducer 12, 30, that is capable of being triggered by the position sensor 22 to emit a perceptible signal depending on the spacial orientation, and the optical signal transducer is a laser 12 that emits light in the visible wavelength range and serves to measure distance.

The Examiner provided the analysis of the features of claim 1 in his rejection of the claims over the patent to Dunne. However, in his analysis presented on page 2 of the Final Office Action the Examiner did not recite the feature of the optical transducer, which is capable of being triggered by the position sensor to emit a perceptible signal depending on the spatial orientation, and is a laser that emits light in the visible wavelength range and serves to measure distance. The same is true for the Examiner's analysis of the present invention in the Advisory Action.

This new feature of the present invention that the laser of the laser module emits light in the visible wavelength range is not disclosed in the patent to Dunne. Furthermore, the patent to Dunne does not teach to use the laser of the laser module 12 which serves to measure a distance, also for emitting a signal to inform the user about the actual spacial orientation of the laser module 12.

It is therefore believed to be clear that this new feature of the present invention, as now defined in claim 1, is not disclosed in the reference.

The Examiner rejected claim 1 over this reference as being anticipated. In connection with this it is believed to be advisable to cite the decision in re Lindenman Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

> "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, the patent to Dunne does not disclose each and every element of the present invention as defined in claim 1, and in particular the element specified herein above. Therefore, the anticipation rejection applied by

the Examiner over the patent to Dunne under 35 U.S.C. 102(b) should be considered as not tenable and should be withdrawn even for this reason.

Furthermore, the Examiner's analysis of claim 11 lacks the crucial feature that the position sensor, the signal transducer, and the laser are integrated in the same housing. In the patent to Dunne the laser is incorporated in the laser module 12, whereas the position sensor and the signal transducer are incorporated in the compass module 14. In other words, the laser is incorporated in the first housing and the position sensor together with the signal transducer are incorporated in the second housing, which is separate from the first housing. Therefore, it is believed that the present invention as defined in claim 11 also clearly and patentably distinguishes from the Dunne reference.

On pages 4 and 5 of the Office Action, the Examiner referred to argument points which in his opinion were presented by the appellants. However, these argumentation points were not brought forward by the appellants in any way. Referring to the first paragraph on page 5 of the Office Action, the applicants did not argue that the patent to Dunne "does not teach a position sensor". This is a wrong assertion by the Examiner. On the contrary, as specified on page 13, second paragraph of the Amendment filed December 7, 2006, referring to the patent to Dunne, it was stated that "a tilt sensor and an acoustic signal transducer are integrated in the compass module 14". Referring

to the second paragraph, the appellants did not argue that "the tilt sensor and the acoustic signal transducer serve primarily to give information about the orientation of the compass module and therefore do not constitute a laser distance measuring device..." The Examiner misinterpreted the arguments presented by the applicants.

It is believed that claim 11 also clearly and patentably distinguishes from the prior art represented by the patent to Dunne.

Claims 1 and 11 should be considered as allowable, and claims 6, 8, 9 which depend on claim 1 and share its features, should also be considered as allowable.

It is therefore respectfully submitted that this is how the first issue to be reviewed on appeal should be resolved.

Arguments presented with respect to the second issue to be reviewed on appeal, namely the rejection of claim 7 under 35 U.S.C. 103(a) over the patent to Dunne.

Claim 7 is a dependent claim which depends on claim 1. This claim shares the allowable features of claim 1, which were specified herein above, and

therefore it should also be considered as allowable. This is how the second issue to be reviewed on appeal should be resolved.

Arguments presented with respect to the third issue to be reviewed on appeal, namely the rejection of claims 3, 10 and 12 under 35 U.S.C. 103(a) over the U.S. patent to Dunne in view of the U.S. patent to Heironimus.

Claims 3 and 10 depend on claim 1 and share its features, while claim 12 depends on claim 11 and shares its features. It is therefore respectfully submitted that claims 3, 10 and 12 should also be considered as patentably distinguishing over the art and should also be allowed. This is how the third issue on appeal should be resolved.

In view of the above presented arguments, it is respectfully requested to reverse the Examiner's rejection of the claims and to allow the present application with all the claims currently on file.

Respectfully submitted,
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CLAIMS APPENDIX

1. Handheld laser distance measuring device, with a position sensor (22) for determining the spacial orientation of the distance measuring device, wherein the position sensor (22) is connected with a signal transducer (12, 28, 30, 32), whereby the signal transducer (12, 28, 30, 32) is capable of being triggered by the position sensor (22) to emit a perceptible signal which depends on the spacial orientation, wherein the signal transducer is an optical signal transducer (12, 30), an acoustic signal transducer (28) or a tactile signal transducer (32) and wherein the optical signal transducer is a laser (12) that emits light in the visible wavelength range and serves to measure distance.

3. The distance measuring device as recited in Claim 1, wherein the optical signal transducer (12, 32) is capable of being triggered by the position sensor (22) to emit an optical signal, the intensity, color, brightness, blinking frequency (f) and/or blinking duration of which are a function of the spacial orientation.

6. The distance measuring device as recited in Claims 1, wherein the acoustic signal transducer (28) is capable of being triggered by the position sensor (22) to emit an acoustic signal, the volume, pitch, frequency of recurrence (f) and/or duration of which are a function of the spacial orientation.

7. The distance measuring device as recited in Claims 1, wherein the tactile signal transducer (32) is capable of being triggered by the position sensor (22) to emit a tactile signal, the impact strength and/or frequency of recurrence (f) of which is a function of the spacial oriention.

8. The distance measuring device as recited in claim 1, wherein the position sensor (22) is a tilt sensor.

9. The distance measuring device as recited in claim 1, wherein, to trigger the signal transducer (12, 28, 30, 32) as a function of the spacial orientation, a control unit (24, 26, 26', 26", 26"', 14) is provided which is connected with the position sensor (22) on the input side and with the signal transducer (12, 28, 30, 32) on the output side.

10. The distance measuring device as recited in Claim 9, wherein the control unit (24, 26, 26', 26", 26"', 14) includes a comparator unit (24) to compare a signal emitted by the position sensor (22) with a specified limiting value and, as a function of the comparison, to generate a control signal (f) for triggering the signal transducer (12, 28, 30, 32).

11. A handheld laser distance measuring device comprising a laser (12) being integrated in a housing, a position sensor (22) for determining the

special orientation of the distance measuring device, wherein the position sensor (22) is connected with a signal transducer (12, 28, 30, 32), whereby the position sensor (22) and the signal transducer (12, 28, 30, 32) are integrated in said housing, whereby the signal transducer (12, 28, 30, 32) is capable of being triggered by the position sensor (22) to emit a perceptible signal which depends on the spacial orientation and wherein the signal transducer in an optical signal transducer (12, 30), an acoustic signal transducer (28) or a tactile signal transducer (32).

12. A handheld laser distance measuring device as recited in claim 11, whereby the optical signal transducer (12, 30) is aimed to emit a signal being perceptible by sighting a target object.

RELATED PROCEEDINGS APPENDIX

None

EVIDENCE APPENDIX

None